BAIL SLIP

That the Appellant/Accused namely K. Sahadeva Reddy was directed to be released on bail by order of this Court dt. 02.12.99 in Crl.MP.No. 9036/96 in Crl.A.No. 788/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR
and
THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

Criminal Appeal No. 788 of 1999

K.Sahadeva Reddy ... Appellant/Accused

-vs-

State by,
Inspector of Police,
Vellore North Police Station,
Vellore District.
(Cr.No.264 of 1996) .. Respondent/Complainant

Prayer: Appeal against the judgment passed by the learned Additional District Sessions Judge cum Chief Judicial Magistrate, Vellore, Vellore District, made in S.C.No.170 of 1997 dated 26.7.1999.

* * * * *

For Appellant : Mr.K.Asokan, Senior Counsel for
Mr.M.Ganesh Rajan

For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by M.CHOCKALINGAM, J)

The sole accused in a case of murder, on being found guilty as per the charge and awarded life imprisonment, has broughtforth this appeal. He was tried by the Court of Additional

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District Sessions Judge cum Chief Judicial Magistrate, Vellore, Vellore District, in Sessions Case No.170/1997.

2. The short facts, excepting unnecessary details, could be stated as follows:

(a) P.W.22 is the father of the deceased. P.W.21 is the brother of the deceased. The family of P.W.22 are living at Peeleru Village. The accused who belonged to the said place, was originally, a tenant under P.W.9. P.W.9 is residing opposite to the house of P.W.22. Subsequently, due to some quarrel, the accused came as a tenant under P.W.22. After coming as a tenant under P.W.22, the accused was occupying the upstairs portion of the house of P.W.22. The deceased associated with the accused and P.W.22 was little bit worrying about the same. P.W.22 came to know that the deceased borrowed money from P.W.21 and handed over to the accused. He informed the deceased to get back the money. On 9.4.96 at about 6.30 a.m., P.W.22 saw the deceased and the accused sitting and chatting outside the house. On seeing them, P.W.22 came out of the house; but before he could come out of the house, the accused and the deceased left the place. On 9.4.1996 at 8.45 a.m., P.W.8, a close relative of P.W.22, found both the accused and the deceased getting inside a bus which was proceeding to Vellore from Kadappa. On the very evening, the accused returned to home alone; but, he was not questioned by anyone. On 9.4.1996 at about 11.30 a.m., both the accused and the deceased went to Vellore and sought for a room in a lodge called "New Royal Lodge" where P.W.3 was a Manager and P.W.4 was a Receptionist. When the accused and the deceased asked for a room, P.Ws.3 and 4 informed them that no room was available. Then, the accused and the deceased went to the opposite lodge namely R.J. Mansion Lodge, which according to the prosecution, is the place of occurrence. The accused and the deceased went to R.J. Mansion Lodge at about 11.50 a.m. and asked for a room. They were allotted Room No.204. After allotting the room, P.W.1 the Manager of that lodge, asked P.W.2 the room boy, to take them to Room No.204. The deceased asked the room boy to get whisky, beer and some eatables. He gave Rs.150/- to P.W.2. P.W.2 purchased the same and handed over to them at 2.00 a.m. At that time, the accused and the deceased were in the room. When P.W.2 was about to give the balance amount of Rs.20/-, the accused asked P.W.2 to keep it for himself and P.W.2 came out of the room. Again, when P.W.2 went to the said Room at about 3.00 a.m., he found the room opened and saw the deceased in a pool of blood. He did not see the accused in the room. Immediately, he told P.W.1 about the same who was in charge of the lodge. P.W.1 was instructed by the owner of the lodge to inform the same to the police.

(b) On intimation, at 4.00 p.m. on 9.4.96, the police people attached to Vellore (North) Police Station arrived. P.W.1 gave a report. Ex.P1 is the report given by P.W.1. P.W.20, the Sub-

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Inspector of Police, on the strength of the report of P.W.1, registered a case in Crime No.264/1996 for the offence under Section 302 I.P.C. The printed first information report Ex.P.21 was despatched to the Court.

(c) P.W.29 the Assistant Superintendent of Police (Training), took up investigation, proceeded to the scene of occurrence, made an inspection in the presence of witnesses and prepared Ex.P2 mahazar and Ex.P.31 rough sketch. The scene of occurrence was caused to be photographed and the photographs were also marked as M.O.63 along with the negatives M.O.62. He recovered M.Os. 1 to 13 from the place of occurrence in the presence of witnesses under Ex.P3 mahazar. The finger print expert was called and the finger prints were taken from the scene of occurrence. The Investigating Officer conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared an Inquest Report Ex.P.32.

(d) Pursuant to the requisition from the Investigating Officer, P.W.16., the Doctor attached to Government Hospital, Vellore, conducted autopsy on the dead body and found the following injuries:

> "(1) An incised injury of 2 x 1 x 4 cm on 4th I.C. Space medial to nipple seen with clots, (2) An incised wound of 4 x 2 x 8 cm on the 5th Inter costal space seen with clots (3) an incised injury of 3 x 1 x 2 cm on the 6th I.C.S. Lateral to previous injury seen with clots (4) Another incised wound of 2 x 1 x 6 cm on the 7th I.C. Space at left mid-clavicular line seen with clots (5) No injuries on limbs seen."

The doctor issued a post mortem certificate, Ex.P.20 wherein he has given his opinion that the deceased would appear to have died of shock and haemorrhage.

3. Pending investigation, on 17.4.1996, P.W.22, the father of the deceased went to a tea shop and noticed a photograph of the deceased published in Andhra Jothi. P.W.22, immediately, asked P.W.21 his son, to go to Vellore, and enquire about the news published in the newspaper. Accordingly, P.W.21 went to Vellore Town Police Station. The photograph of the deceased was shown to him by P.W.13 the Investigating Officer. He found that the person who was murdered, was his brother. Immediately, he rushed to his native place and informed his father, P.W.22. P.W.21 along with others went to the Police Station. They were taken to the mortuary by the police personnels. The accused also went along with them. On seeing the dead body of the deceased, the accused cried out stating "I have committed a sin by killing him". Then only, the witnesses P.W.21 and 22 came to know that the accused had committed murder. Thereafter, the accused was arrested. He gave a confessional statement which was recorded by the Investigating Officer in the presence of witnesses. The admissible part was marked as Ex.P.4. Following the same, the accused

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produced M.O.14 knife which was recovered under Ex.P.5 mahazar. The material objects which were recovered from the place of occurrence, from the dead body of the deceased and the material objects produced by the accused were all subjected to chemical analysis, pursuant to which, the chemical analyst's report, Exs.P.17 was placed before the Court. Finger print experts' report, Ex.P.23 was also received by the Court. On completion of investigation, the final report was filed by the Investigating Officer and the case was committed to the Court of Sessions and necessary charge was framed.

4. In order to substantiate the charges levelled against the appellant/accused, the prosecution marched 30 witnesses and marked 36 exhibits and 71 material objects. On completion of the evidence on the side of the prosecution, the appellant/accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The accused denied them as false. No defence witnesses were examined. The trial Court, heard the arguments advanced by both sides and made a scrutiny of the materials available and ultimately, found the appellant/accused guilty as per the charge and awarded the punishment referred to above, which is the subject matter of challenge in this appeal.

5. Mr.K.Asokan, learned Senior counsel appearing for the appellant made the following submissions:

(a) In the instant case, the prosecution has no direct evidence to offer. The prosecution mainly relied upon the evidence of P.Ws.1,2, 3 and 4. P.Ws.1 and 2 are working as Manager and Room boy respectively in R.J.Mansion Lodge, where the deceased stayed on the date of occurrence i.e., 9.4.1996. P.Ws.3 and 4 are the manager and the receptionist respectively of New Royal Lodge where the accused and the deceased could not get a room. It has to be pointed out that it is a case where P.Ws.1 to 4 would have seen the deceased and the accused only for a short while. Hence, it is a fit case where the identification parade should have been conducted. Since identification parade was not conducted which is vital to prove the prosecution case, their evidence has no avail to the prosecution case; but, the lower Court has erroneously accepted their evidence. Secondly, to strengthen their case, the prosecution relied on the evidence of P.W.8. According to P.W.8, at 8.45 a.m., he saw both the accused and the deceased boarding the bus which was running between Kadapa and Vellore. Actually, if he would have seen them boarding the bus, there is no impediment for him to inform his close relatives P.Ws.21 and 22 about the same, despite the fact, he knew that they were searching for the deceased. This strong circumstance would go to show that P.W.8 was planted to fill up the circumstances.

(b) Added further, the learned Senior Counsel that pursuant to the arrest of the accused, recovery was made which seems to be artificial. Apart from that, the accused gave his statement in

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writing and for the purpose of comparing his signatures, Ex.P12 was obtained which was dated 17.4.96. According to the prosecution, the accused was arrested on 18.4.96. Hence, there is no question of getting his signature or hand written statement on 17.4.1996. Thus, it would clearly indicate that he was not arrested on 18.4.1996 as putforth by the prosecution. Hence, there is no question of giving confessional statement and the recovery made also could not have followed. In the instant case, the finger prints relied on by the lower Court were not taken after obtaining prior permission from the Magistrate . Further, it could be seen that the Investigating Officer had obtained the translation version of the handwritten statement of the accused which appears to be dated 22.4.96. Thus, it would go to show that all the above incidents could not have taken place at all. Further, it is the case of the prosecution that P.W.8 saw both the accused and the deceased going out of the village at 8.45 a.m. and on the very evening, the accused alone returned and he was not questioned. But the prosecution has come forward to state that when the accused went to the mortuary on 18.4.1996 along with the police personnel and on seeing the dead body, he cried saying that he had committed a sin by murdering the deceased which were all created for the sake of the prosecution case. According to P.W.21, he went to the Police Station on 17.4.1996 where the photograph of the deceased was shown to him. He also took the photograph to his native place and showed the same to his father P.W.22.; but no witnesses were examined by the police on the very day. All would go to show that not only one circumstance, but also all the other circumstances, were introduced in order to make it believe that it was the accused who committed murder. Under such circumstances, the trial Court should have outrightly disbelieved the case of the prosecution, but has failed to do so. Hence, it has got to be considered by this Court.

6. The Court heard the learned counsel for the State on the above contentions.

7. It is not in controversy that the son of P.W.22 was found dead in R.J. Mansion Lodge at Vellore on 9.4.1996 at about 3.00 p.m. On information to the police through P.W.1, the case came to be registered. During investigation, an inquest was conducted and the Inquest Report Ex.P.32 was prepared and the dead body was subjected to post mortem. The post mortem certificate Ex.P.20 would clearly reveal that the deceased died out of shock and haemorrhage . Thus, the prosecution has proved the fact by sufficient evidence that the deceased died out of homicidal violence. Apart from that, this fact is not disputed by the accused either before the trial Court or before this Court and hence, it could be safely recorded that the deceased died on account of homicidal violence.

8. At the outset, it has to be pointed out that in the instant

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case, the prosecution relied on the circumstantial evidence to establish its case, since no direct evidence was available. In a case, where the prosecution rests its case on the circumstantial evidence, needless to say that it should prove all the circumstances so as to make it a complete chain, pointing to the hypothesis that except the accused, no one else could have committed the offence.

9. After perusal of the entire materials available, the Court is of the considered opinion that by the circumstantial evidence the prosecution have proved the case and broughtforth the guilt of the accused without any iota of doubt. In the instant case, admittedly, P.W.22 the father of the deceased, P.W.21, the brother of the deceased, and the accused were all residing in the same place. During the relevant time, the deceased was also a tenant under P.W.22. On 9.4.1996, P.W.22 had seen both the accused and the deceased sitting and chatting outside the house and apart from that, on 9.4.96 at about 8.45 a.m.,P.W.8 saw both of them boarding the bus which was running between Kadappa and Vellore and the evidence of P.Ws.3 and 4 would go to show that the deceased and the appellant came to 'New Royal Lodge' at 11.30 a.m. and asked for a room. Since they could not get a room, both of them went to R.J. Mansion lodge at about 12.30 noon. At that time, P.W.1 who was the Manager of the lodge and P.W.2, the room boy, were there. Room No.204 was allotted to the accused and the deceased, and the room boy assisted them. P.Ws.1 and 2 were examined by the prosecution and their evidence were carefully scrutinised. P.Ws. 1 and 2 have clearly pointed out that the accused and the appellant came to the Lodge and asked for a room and they were allotted Room No.204 and P.W.2 the room boy in particular, deposed that the deceased gave Rs.150/- and asked him to purchase whisky, beer and briyani and he purchased the same and handed over to them and gave the balance of Rs.20/- but the accused in turn, told him to take the balance amount. Subsequently, at 3 'O' Clock when P.W.2 went to the room, he found the door opened and saw the deceased in a pool of blood and the accused/appellant was not found. The contention putforth by the learned Senior counsel for the appellant that there was no identification parade and P.Ws.1 and 2 could not have clearly seen the accused and that they would have seen him only for a few minutes and that the non-conduct of identification parade is sufficient to reject the case of the prosecution cannot be accepted for the simple reason that P.W.2, the room boy of Room No.204, has stated in his evidence that between 12.30 to 3.00 p.m it was he who attended that room and he was asked to purchase whisky, beer etc. and again he went to the said room at 2.00 p.m. and gave the things that he had purchased and he was also asked to take the balance amount of Rs.20/-. It is pertinent to point out that this fact is unusual and hence, P.W.2 would have kept in his memory the identification of those persons. His statement was recorded by the police within a few hours and in Sec.161 statement of P.Ws.1 and 2 they have clearly mentioned about the details of the

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physical features of the accused and subsequently, they have identified the accused without any doubt. Hence, the non-conduct of the identification parade in this case, in the opinion of the court, would in no way, take away the truth of the prosecution case.

10. As regards the next contention that P.W.8 who have seen both the accused and the deceased boarding the bus on 9.4.96, should have brought the same to the notice of P.Ws.21 and 22, when he came to know about the search of the accused by them, it is pertinent to point out that in the instant case, P.W.8 knew that the accused was a tenant of P.W.22 and was staying in the upstairs of P.W.22's house. From the evidence, it could be seen that even P.Ws.21 and 22 did not entertain any doubt or suspicion. Apart from that, the accused was staying in his house from 9.4.96 till 18.4.96. If the accused would have stayed away from the house for a week or so, P.Ws.8, 21 and 22 would have suspected him. Merely because P.W.8 did not bring it to the notice of P.Ws.21 and 22 that he saw the accused and the deceased at 8.45 a.m. on 9.4.96 and gave the information belatedly, the said contention cannot be countenanced. So far as the contention putforth on the side of the appellant that the police came to the place on 17.4.1996 itself; but, they have not examined any one of the witnesses and the accused was concerned, it has to be pointed out that no one suspected the accused, since the accused was with them all along and only when the accused cried out in the mortuary on seeing the dead body that he had committed a sin by murdering the deceased, the complicity of the accused in the crime came out. Hence, the Court is of the considered opinion that all the circumstantial evidence broughtforth by the prosecution are natural and cogent and it proves the guilt of the accused. In the instant case, the fingerprints were taken from the place of occurrence and the same were also compared with the finger prints taken from the accused and were found tallying with the finger prints of the accused as per the fingerprint expert's report, Ex.P23.

11. Learned counsel for the appellant submitted that prior permission of the Magistrate should have been obtained before taking the fingerprints. In support of the said contention, he relied on the judgement reported in Mohd. Aman V. State of Rajasthan 1997 S.C.C. (Cri) 777. A perusal of the said judgment would clearly reveal that the Police is competent to take specimen fingerprints of the accused, and however to dispel any suspicion or to eliminate possibilities for fabrication of evidence, they should be taken before or under the order of a Magistrate. From a reading of the said judgment, it could be seen that it is not mandatory to get the order of the Magistrate for taking the fingerprints. Moreover in the present case, no suspicion prevailed when the finger prints were taken. The other contention that when the accused was arrested on 18.4.1996 as putforth by the prosecution, there was no question of getting his signature on 17.4.1996 as found in Ex.P.12, has got to be rejected

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for the reason that Ex.P.12 is in the handwriting of the accused. Apart from that, the translation copy of the same bears the signature of the accused with the date as 22.4.96. Hence, Ex.P12 could not have been written on 17.4.86 as found therein and hence, the same cannot shake the truth broughtforth by the prosecution.

12. For the reasons stated above, all the contentions putforth by the learned counsel for the appellant, do not weigh or merit acceptance in the face of the circumstantial evidence that has been broughtforth by the prosecution which in the opinion of the Court makes it a complete chain to prove that it was the accused who had committed the offence and none else. The lower Court was perfectly correct in awarding the life imprisonment and this Court finds no infirmity or illegality in the order passed by the lower Court.

13. Therefore, the appeal fails and the same is dismissed. The conviction and the sentence imposed on the appellant/accused by the lower Court are confirmed. It is reported that the appellant/accused is on bail. The Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence imposed upon him.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate No.4, Vellore

1a. - do - thro' The Chief Judicial Magistrate,
North Larcot, Vellore.

1b. The Additional District and Sessions Judge cum
Chief Judicial Magistrate,
Vellore.

2. -do- The Principal District Judge, Vellore.

3. The District Collector, Vellore.

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4. The Director General of Police, Mylapore, Chennai-4.

5. The Public Prosecutor, Chennai.

6. The Superintendent of Police, Central Prison, Chennai.

7. The Inspector of police, Vellore North Police Station, Vellore.

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